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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 3, 1999

**HAND-DELIVERED**

Ms. Magalie Roman Salas  
Secretary  
Office of the Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
445 12th Street, S.W.  
TW-A325  
Washington, D.C. 20554.

Re: *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, FCC 98-309, released November 25, 1998 (Third Notice of Proposed Rule Making in ET Docket No. 95-18) -- Comments of Iridium, LLC*

Dear Madam Secretary:

On behalf of Iridium LLC, and pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419 (1997), I enclose for filing in the above-captioned proceeding an original and four (4) copies of Iridium's "Comments" in response to the Commission's Third Notice of Proposed Rule Making. Concurrently with this filing, Iridium is also submitting a copy of these Comments electronically via the Commission's Electronic Comment Filing System ("ECFS").

Kindly stamp and return to this office the enclosed receipt copy of the filing designated for that purpose. You may direct any questions concerning this filing to the undersigned.

Respectfully submitted,

  
Eric T. Werner

Enclosures

No. of Copies rec'd 0+4  
List A B C D E

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 2.106 of the	)	ET Docket No. 95-18
Commission's Rules to Allocate	)	
Spectrum at 2 GHz for Use	)	
by the Mobile-Satellite Service	)	

To: The Commission

**COMMENTS OF IRIDIUM LLC**

Iridium LLC ("Iridium"), by its attorneys, and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415 (1997), hereby respectfully submits its comments in response to the Commission's *Third Notice of Proposed Rule Making* ("Notice"), released November 25, 1998, in the above-captioned proceeding.<sup>1/</sup>

**I. INTRODUCTION**

The *Notice* represents an important further milestone in the Commission's continuing endeavor to relocate incumbent licensees in the 2 GHz band to clear the way for entry by the next generation of competitive mobile satellite service ("MSS") providers. Iridium has been an active participant in every stage of this proceeding<sup>2/</sup> and, as a present

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<sup>1/</sup> *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, FCC 98-309, released November 25, 1998 (*Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order* in ET Docket No. 95-18) ("Notice"). The summary of the Third Notice of Proposed Rule Making appeared in the Federal Register on December 17, 1998. See 63 FED. REG. 69606 (December 17, 1998).

<sup>2/</sup> See, e.g., Comments of Iridium, Inc., filed May 5, 1995; Supplemental Reply Comments of Iridium, Inc., filed May 17, 1996; Reply Comments of Iridium LLC, filed July 23, 1997.

applicant<sup>3/</sup> to provide MSS service in the 2 GHz band, welcomes this opportunity to contribute further to this important effort.

Iridium commends the Commission for the manner in which it has, to date, navigated through the difficult task of harmonizing the needs of MSS operators for timely and certain access to the 2 GHz band with the legitimate expectations of incumbent licensees who will be required to vacate the band. In this regard, Iridium supports the Commission's proposal in the *Notice* to reallocate 85 MHz of spectrum for the Broadcast Auxiliary Service ("BAS") at 2025-2110 MHz to accommodate BAS licensees' need for spectrum and mitigate the effects of the 1997 Budget Act on those licensees.<sup>4/</sup>

With respect to the details of effectuating the relocation of incumbent licensees from the 2 GHz band, Iridium believes that the framework ultimately adopted by the Commission should embrace the following core principles:

- First, to provide MSS operators with the necessary certainty that the band will be clear to accommodate entry in time to meet operators' projected deployment deadlines, and to assure competitive neutrality among MSS operators, the Commission should establish a date certain for the departure of all incumbent licensees that is no later than three years from the date on which the Commission grants licenses to MSS operators to operate in the band.
- Second, in exchange for this accelerated relocation schedule, all incumbents that vacate the band by the specified date should be reimbursed for the appropriate cost of retuning or replacing their equipment with comparable facilities to relocate them to new

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<sup>3/</sup> See *Application of Iridium LLC for Authority to Launch and Operate the Macrocell Mobile Satellite System in the 1990 to 2025 and 2165 to 2200 MHz Mobile Satellite Service Bands*, File No. 187-SAT-P/LA-97(96).

<sup>4/</sup> See *Notice*, slip op. at 15 ¶ 32. Iridium expresses no view with respect to the Commission's proposed channelization plan for this spectrum. See *id.*, slip op. at 17 ¶ 37. While Iridium generally believes that use of spectrum-efficient technologies wherever feasible ultimately serves the interest of all licensees, Iridium defers to the BAS licensees who will occupy the spectrum to adjudge the technical characteristics that best meet their needs.

spectrum. By contrast, incumbents who fail to meet this deadline should generally be deemed to be ineligible for reimbursement.

- Third, because all MSS operators share in the benefits of clearing the band, all licensed operators<sup>5/</sup> should be required to contribute to a common fund that will be used to reimburse incumbents' relocation expenses. The amount of money contributed by each MSS licensee should be determined on a pro rata basis keyed to the amount of spectrum made available to each MSS licensee.

Iridium believes the relocation reimbursement policies established in the *Emerging Technologies* proceeding provide the basis to achieve these core objectives, and Iridium supports in principle the Commission's proposal to apply them to the instant proceeding. However, Iridium believes that the ubiquitous, nationwide characteristics of the service MSS operators expect to provide creates unique circumstances that did not exist for the personal communications service ("PCS") licensees when the *Emerging Technologies* framework was first developed. Accordingly, Iridium herein respectfully suggests some modest modifications to that framework that are necessary to respond to these unique circumstances.

## **II. RELOCATION OF INCUMBENT BAS LICENSEES**

As an initial matter, Iridium supports the Commission's tentative conclusion to require simultaneous retuning or replacement of all BAS equipment nationwide on a date certain.<sup>6/</sup> Aside from the operational characteristics of the BAS service that the Commission believes support this course, the Commission's proposal would also provide MSS operators with valuable assurance that their assigned spectrum will be clear for entry

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<sup>5/</sup> In this context, Iridium would include operators licensed by a foreign administration and serving the United States pursuant to a Letter of Intent as well as operators licensed by the Commission.

<sup>6/</sup> *Notice*, slip op. at 18 ¶ 39.

at the time it is required. Moreover, such an approach is also competitively neutral because it assures that all MSS operators will have access to their assigned spectrum simultaneously and, therefore, will have an incentive to bring their respective services to market as soon as possible.

Iridium believes that the Commission could facilitate MSS operators' expeditious access to their assigned spectrum while simultaneously retaining the integrity of BAS operations by fixing the date for the transition no later than the third anniversary of the date on which the Commission issues licenses to MSS operators.<sup>7/</sup> In the *Notice*, the Commission observes that such a plan would likely require a substantial up-front capital outlay by MSS licensees.<sup>8/</sup> Iridium believes this is a cost that MSS operators should and will be willing to bear in exchange for the guarantee of clear, unencumbered spectrum in a timely fashion and as of a date certain.

As the Commission observed in the *Notice*, "the *Memorandum Opinion and Order* . . . affirm[ed] the Commission's prior decision to apply the *Emerging Technologies* relocation compensation policies to the MSS allocations in the 2 GHz band. MSS licensees will be required to pay for the retuning or replacement of incumbent BAS systems if [they] desire[ ] expeditious access to the spectrum."<sup>9/</sup> Iridium supports this principle and believes that the creation of a common relocation fund would provide BAS (and other incumbents) with sufficient assurance of reimbursement for their equipment

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<sup>7/</sup> Such a date would roughly strike a compromise between the range of dates that ICO USA Service Group ("ICO") has advanced in its recent *ex parte* filings with the Commission. See *id.* ¶ 41 & n.71 (citing Letter from C. Tritt, Morrison & Foerster, LLP, to M Salas, Secretary, Federal Communications Commission, Oct. 20, 1998).

<sup>8/</sup> *Id.* ¶ 39.

<sup>9/</sup> *Id.*, slip op. at 19 ¶ 42.

costs to enable them to move ahead with relocation on this accelerated schedule. Similarly, consonant with the "sunset" principle that the Commission adopted in the PCS proceeding,<sup>10/</sup> the Commission should provide that incumbents that do not reconfigure their facilities to vacate the band by the prescribed date will be ineligible to receive funds from the reimbursement pool.

With respect to the amount each MSS operator would be expected to contribute, Iridium believes that the Commission should require each MSS licensee to share in the financial responsibility in proportion to the amount of spectrum that each MSS licensee has available to it.<sup>11/</sup> Such an allocation is appropriate for two reasons: First, the amount of spectrum each MSS licensee has available directly impacts that licensee's overall system capacities. Basic fairness dictates that those who have access to a greater amount of spectrum, and thus greater capacity, be required to contribute more to the relocation effort. Second, this approach avoids the inequities that would result if each licensee were solely responsible for satisfying the reimbursement obligations associated with the incumbents that occupy its assigned spectrum.<sup>12/</sup>

Finally, as the Commission noted, its reimbursement proposal envisions reimbursing incumbents "for equipment costs necessary to implement our allocation plan,

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<sup>10/</sup> See 47 C.F.R. § 101.79; *see also Notice*, slip op. at 20-21 ¶ 45.

<sup>11/</sup> See *Notice*, slip op. at 19 ¶ 42.

<sup>12/</sup> It is possible that incumbent groups (e.g., state and local public safety organizations) presently occupying certain segments of the band will be more costly or difficult to relocate than incumbents occupying other segments of the band. As a consequence, a licensee that receives a spectrum assignment from the Commission that includes these more costly or problematic incumbents could encounter significantly greater relocation obligations than a competing MSS operator who received spectrum occupied by less costly incumbents. This arrangement would confer upon the latter licensee the sort of unearned competitive advantage that the Commission should avoid wherever possible in executing its regulatory responsibilities.

consistent with the policies established in the *Emerging Technologies* proceeding and modified in the *Microwave Relocation Cost-Sharing* proceeding.”<sup>13/</sup> The Commission also asked for input “on whether [it] should establish criteria to gauge the acceptability of replacement BAS equipment and, if so, what those criteria should be.”<sup>14/</sup> To reduce the number of disputes that may arise concerning whether certain equipment costs are “necessary” to effectuate a particular incumbent’s relocation, Iridium suggests that the Commission adopt a “comparable facilities” standard similar to that it now employs in its microwave relocation rules.<sup>15/</sup>

The greatest challenge the Commission is likely to confront in implementing the mechanics of its *Emerging Technologies/Microwave Cost-Sharing* framework in the present context is the application of the negotiation scheme envisioned by those rules. Iridium believes that a staggered schedule of “voluntary” and “mandatory” negotiations between individual incumbents and new entrants is inefficient and unworkable in the MSS context. In the PCS context, new entrants had to concern themselves only with a handful of incumbents within a limited geographic region (the licensee’s MTA), thus circumscribing the number and complexity of negotiations that had to be completed. By contrast, the ubiquitous nature of MSS service would compel an operator to negotiate with every incumbent operating on the MSS operator’s assigned frequencies anywhere throughout the country. Similarly, because the bandwidth presently assigned to individual BAS (and FS) incumbents could overlap that which the Commission will assign to different MSS

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<sup>13/</sup> See Notice, slip op. at 19 ¶ 42.

<sup>14/</sup> Id. ¶ 43.

<sup>15/</sup> See 47 C.F.R. § 101.75(b) (1997).

licensees, each incumbent could have to deal with multiple MSS operators to effectuate reconfiguration of its facilities.

Such individualized negotiations, Iridium believes, would present cumbersome logistical difficulties for MSS operators and incumbents alike that would delay rather than expedite the clearance of incumbents from the band.<sup>16/</sup> The problems associated with individual negotiations could be largely avoided by permitting MSS operators to deal with incumbents collectively in inter-industry negotiations. Such negotiations could be used to resolve on a consensus basis such issues as: the sequence in which incumbents operating in various segments of the band will migrate to their new spectrum; timetables for the relocation of various incumbent groups; and questions concerning the most appropriate method for effectuating the relocation (e.g., retuning or replacement of equipment). To help ensure that the process moves forward in a productive fashion, Iridium would support the Commission's proposal<sup>17/</sup> to apply to these inter-industry negotiations some adaptation of the good faith guidelines embodied in Section 101.73 of the Commission's rules.

### **III. RELOCATION OF FIXED SERVICE ("FS") INCUMBENTS**

With some exceptions in the details, the Commission has also proposed to apply the *Emerging Technologies/Microwave Relocation Cost-Sharing* framework with respect to the relocation of Fixed Service Microwave ("FS") incumbents now operating in the 2 GHz band.<sup>18/</sup> Specifically, the Commission proposes to employ the same individualized

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<sup>16/</sup> Indeed, the Commission has recognized the difficulties that such a large undertaking would entail and envisioned the very sort of collective industry negotiation approach that Iridium proposes herein to minimize the difficulty of negotiating relocation. See *Notice*, slip op. at 13 ¶ 26.

<sup>17/</sup> See *id.*, slip op. at 21 ¶ 46.

<sup>18/</sup> See generally *id.*, slip op. at 21-22 ¶¶ 47, 49.



negotiation process, with voluntary and mandatory negotiation periods subject to good faith negotiation guidelines and a 10 year sunset provision.<sup>19/</sup>

For the reasons identified in the previous section, Iridium believes this framework poses as much difficulty for clearing FS incumbents from the band as it does for BAS incumbents. Accordingly, Iridium urges the Commission to require FS incumbents to meet the same deadline as that applicable to BAS incumbents for relocating from the segments of the 2 GHz band allocated for use by MSS. In addition, Iridium proposes that FS incumbents be included in the inter-industry negotiations in the same fashion proposed above for BAS incumbents.

Finally, Iridium believes that the deadline proposed herein for relocating incumbents in the 2 GHz band makes it likely that MSS operators will be responsible in the first instance for effectuating the clearance of the 2115-2150 MHz band (now allocated to FS and Mobile Service ("MS") use for assignment by auction) as part of the process of clearing the paired 2165-2200 MHz band. As a consequence, MSS operators will be paying -- through the relocation fund discussed above -- to clear spectrum for the benefit of a subsequent FS or MS auction winner. Iridium agrees that it is appropriate that such subsequent licensees of this spectrum should be required to reimburse MSS operators for this expense, and Iridium supports the Commission's proposal in this regard.<sup>20/</sup>

#### **IV. CONCLUSION**

The ubiquitous nature of MSS service presents the Commission with clear challenges in relocating incumbents that the agency's previous experience with PCS entry

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<sup>19/</sup> *Id.*, slip op. at 22-23 ¶¶ 49-50.

<sup>20/</sup> *See id.*, slip op. at 23 ¶ 51.

did not. Nevertheless, the central principles remain the same: New entrants require certain access to clear spectrum, and incumbents are entitled to appropriate reimbursement for their relocation expenses. The general approach outlined in the Commission's *Notice* makes important strides towards harmonizing these competing expectations, but the process can be made more effective for all concerned parties.

The Commission should fix a date no later than the third anniversary of its order granting licenses to MSS operators for all incumbent licensees, BAS and FS alike, to be out of the band. All incumbents that meet this prescribed deadline should be reimbursed for the appropriate cost of retuning or replacing their equipment with comparable facilities from a common fund established for this purpose. All MSS licensees should be required to contribute to the fund based upon the amount of spectrum available to each. Finally, the Commission should not subject MSS licensees or incumbents to difficult and cumbersome individualized negotiations but should permit these groups to resolve specific relocation issues through inter-industry negotiations.

Respectfully submitted,

**IRIDIUM LLC**

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